LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
AUG 25 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 59

SUZANNE THOMAS RICHARDS, ETC., *et al.*,

Petitioners,

—against—

UNITED STATES *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ~~SECOND~~ Tenth CIRCUIT

BRIEF FOR THE PETITIONERS

EDWARD M. O'BRIEN and
TRUMAN B. RUCKER

Counsel for Petitioners
290 Madison Avenue
New York 17, New York

INDEX

PAGE

Opinions Below 1

Basis of Jurisdiction 1-2

Statutes Involved 2-4

Questions Presented 5

Statement of the Case 6-10

Summary of Argument 10-11

ARGUMENT:

I. The holding of the Court below completely negated the ordinary and plain meaning of the language employed by Congress to determine the liability of the United States under the Federal Tort Claims Act 12-24

II. The Application of the Oklahoma conflict of laws rule by the Court below defeated the legislative purpose to have the liability of the United States determined in accordance with the law of the place where the act or omission occurred 25-28

III. Since the choice of law in these actions is federal and not state, the application of the Oklahoma rule, that its death statute has no extraterritorial effect, was a complete disregard of the congressional purpose to have the liability of the Government determined in accordance with the law of the place where the act or omission occurred 29-33

PAGE

CONCLUSION 34

PRAYER 35

TABLE OF CASES CITED

American Banana Co. v. United Fruit Co., 213 U. S. 347 26

Baker v. Haldeman-Julius, 149 Kan. 560 25
Brotherhood of Railroad Trainmen v. Chicago, R. & I. R. Co., 353 U. S. 30 13
Burkett v. Globe Indemnity Co., 182 Miss. 423 26

Caldwell v. Gore, 175 La. 501 25-26

Dalehite v. United States, 346 U. S. 15 ..... 15, 21, 22, 32
Davies Warehouse Co. v. Bowles, 321 U. S. 144 30
D'oench, Duhme Co. v. Federal Deposit Insurance Corp., 315 U. S. 447 28
Dowell v. Cox, 108 Va. 460 27

Eastern Air Lines, Inc. v. Union Trust Co., 95 U. S. App. D. C. 189, 221 F. 2d 62, certiorari denied *sub nom.* Union Trust Co. v. United States, 350 U. S. 911 ..... 19, 23, 26
Erie R. Co. v. Tompkins, 304 U. S. 64 28

Fenton v. Sinclair Refining Co., 206 Okla. 19 31
Feres v. United States, 340 U. S. 135 ..... 15, 21, 32
Flora v. United States, 357 U. S. 63 12
F. W. Woolworth Co. v. Todd, 204 Okla. 532 30

Gochenour v. St. Louis-San Francisco Ry. Co., 205 Okla. 594 ..... 20, 25, 30, 31

PAGE

Hess v. United States, 259 F. 2d 285 (9th Cir.), reversed on other grounds, 361 U. S. 314 ..... 23, 27, 28

Iselin v. United States, 270 U. S. 245 24

Jackson v. Taylor, 353 U. S. 569 26

Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U. S. 487 28

Lauritzen v. Larsen, 345 U. S. 571 26
Lee Way Motor Freight v. Yellow Transit Freight Lines, 251 F. 2d 97 (10th Cir.) 30
Levy v. Daniel's U-Drive Auto Renting Co., 108 Conn. 333 25

Massachusetts Bonding & Insurance Co. v. United States, 352 U. S. 128 ..... 21, 26, 30
McKenzie v. Irving Trust Co., 323 U. S. 365 ..... 21, 28

National Labor Relations Board v. Lion Oil Co., 352 U. S. 282 14
Nolan v. Transocean Airlines, 276 F. 2d 280 (2d Cir.), judgment set aside and remanded, 365 U. S. 293, reaffirmed on remand, 290 F. 2d 904 22

Osaka Shosen Kaisha Line v. United States, 300 U. S. 98 12-13

Panama Refining Co. v. Ryan, 293 U. S. 388 14

Richards v. United States, 285 F. 2d 524 (10th Cir.) .. 14, 23, 24, 33

Sherly v. Lotz, 200 Va. 173 32
Slater v. Mexican National R. Co., 194 U. S. 120 26
Soriano v. United States, 352 U. S. 270 21

PAGE

State of Maryland for use of Burkhardt v. United States, 165 F. 2d 869 (4th Cir.) 21, 29
State of Maryland for use of Jones v. Coard, 175 Va. 571 ..... 27, 32

Textile Workers Union of America v. Lincoln Mills of Alabama, 353 U. S. 448 ..... 24, 29

Union Trust Co. v. Eastern Air Lines, 350 U. S. 907, modified and remanded, 350 U. S. 962 27
Union Trust Co. v. United States, 113 F. Supp. 80 (D. C. Dist. of Col. 1953) 27
United States v. Hartwell, 6 Wall. 385 13
United States v. Marshall, 230 F. 2d 183 (9th Cir.) ..23, 27, 28
United States v. Shirley, 359 U. S. 255 26
United States v. Spelar, 338 U. S. 217 ..... 17, 19
United States v. Union Trust Co., 95 U. S. App. D. C. 189, 221 F. 2d 62, certiorari denied 350 U. S. 911 31
United States v. Wiltberger, 5 Wheat. 76 13

Van Camp & Sons v. Am. Can Co., 278 U. S. 245 13
Vanston Bondholders Protective Committee v. Green, 329 U. S. 159 28
Voytas v. United States, 256 F. 2d 786 (7th Cir.) 23, 27
Vrooman v. Beech Aircraft Corp., 183 F. 2d 479 (10th Cir.) 25

Wells v. Simonds Abrasive Co., 345 U. S. 514 30
Withrow v. Edwards, 181 Va. 344, reversed in part on other grounds, 181 Va. 592, cert. den. 320 U. S. 761 32

PAGE

STATUTES

Federal Tort Claims Act, 28 U. S. C. (1952 Ed.):

Section 1346(b) 2, 6, 12, 14, 15, 16, 20, 23, 25, 28, 30
Section 1402(b) 2, 6, 10, 15, 28
Section 2401(b) 20
Section 2402 20
Section 2671 6
Section 2672 ..... 2-3, 14, 15, 25
Section 2674 ..... 3, 14, 15, 20, 23, 25
Section 2675(a) 15
Section 2676 15
Section 2680 ..... 6, 20
Section 2680(a) 15
Section 2680(e) 15
Section 2680(h) 20
Section 2680(k) 20, 22

Legislative Reorganization Act, Title IV (1946), 60 Stat. 842 ..... 15, 17

Missouri Wrongful Death Statute, Title 36, V. A. Mo. S. Ch. 537, §537.080 (R. S. 1939, Sec. 3653) 4

Oklahoma Wrongful Death Statute, Title 12, Okl. St. Ann., §1053 (1937 Ed., as amended Laws 1943, p. 35, §1) 3-4, 6

R. S. 1939, §3653 4

Statutes at Large:

60 Stat. 842 ..... 15, 17
62 Stat. 983 ..... 3, 14

United States Code, Title 28, §1254(1) 1

PAGE

AUTHORITIES

15 C. J. S. *Conflict of Laws*, §12, nn. 63, 70, 71 25
25 C. J. S. *Death*, §28, nn. 27-30 25
Goodrich, *Conflict of Laws*, 263-264 (1949 ed.) 25
Restatement, *Conflict of Laws* (1934), §§377, 378, 391 ..20, 25
Rheinstein, "*The Place of Wrong*," 19 Tulane L. Rev. 4, 165 26

MISCELLANEOUS

Hearings before the House Committee on the Judiciary, 77th Cong., 2d Sess., on H. R. 5373 and H. R. 6463, January 29, 1942, pp. 1-69 .....15, 16, 17, 18, 19, 20-21
Pages 1-6: Committee Print of H. R. 5373 ....16, 17, 18
Pages 6-24, 30-36: Oral testimony before Committee 16, 17, 18, 19, 20-21
Pages 24-30: Prepared statement of draftsmen ..16, 18, 19
Pages 37-46: Memorandum, with Appendices, for use of the Committee on the Judiciary—Explanatory of Committee Print of H. R. 5373 ..15, 16, 17
Pages 47, 48: Appendix I to Memorandum 16
Pages 49-55: Appendix II to Memorandum 16
Page 56: Appendix III to Memorandum 16
Pages 57-69: Appendix IV to Memorandum 16, 18

H. R. 5299, 77th Cong., 1st Sess. 16
H. R. 5373, 77th Cong., 1st Sess. 16, 17, 18, 19
Section 201 16
Section 303(12) 18

PAGE

H. R. 6463, 77th Cong., 2d Sess. 16
Section 201 17
Section 301 ..... 17, 19
Section 402(12) 18
H. R. 6716, 69th Cong., 1st Sess. 16
H. R. 7236, 76th Cong., 3d Sess. 16, 17, 18
H. R. 8651, 69th Cong., 1st Sess. 16
H. R. 9285, 70th Cong., 2d Sess. 16
H. R. Rep. No. 1287, 79th Cong., 1st Sess. 18
H. R. Rep. No. 2245, 77th Cong., 2d Sess. 18
S. 211, 72d Cong., 1st Sess. 16
S. 1043, 74th Cong., 1st Sess. 16
S. 2690, 76th Cong., 1st Sess. 16
S. Rep. No. 1196, 77th Cong., 2d Sess., §301 18
S. Rep. No. 1400, 79th Cong., 2d Sess. 18

In the

Supreme Court of the United States

October Term, 1961

No. 59

Suzanne Thomas Richards, etc., *et al.*,

Petitioners,

—against—

United States *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE PETITIONERS

Opinions Below

The opinion of the Court of Appeals is reported in 285 F. 2d 521. No opinion was written by the District Court. The judgment of the District Court, applicable to all actions, was entered and filed January 18, 1960, and was based upon Findings of Fact, Conclusions of Law and Order of Judgment made by the Court (R. 20-22).

Basis of Jurisdiction

The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1). Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

was filed February 21, 1961. Certiorari was granted by this Court May 8, 1961, 366 U. S. 916.

Statutes Involved

Title 28 U. S. C. §1346(b) (1952 Ed.) provides as follows:

> Subject to the provisions of chapter 171 of this title, the district courts, together with the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant, in accordance with the law of the place where the act or omission occurred.

Title 28 U. S. C. §1402(b) (1952 Ed.) provides as follows:

> Any civil action on a tort claim against the United States under subsection (b) of section 1346 of this title may be prosecuted only in the judicial district where the plaintiff resides or wherein the act or omission complained of occurred. June 25, 1948, c. 646, 62 Stat. 937.

Title 28 U. S. C. §2672 (1952 Ed.) provided on August 4, 1955, in pertinent part, as follows:

> The head of each federal agency, or his designee for the purpose, acting on behalf of the United States,

may consider, ascertain, adjust, determine, and settle any claim for money damages of $1,000 or less against the United States accruing on and after January 1, 1945, for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

Title 28 U. S. C. §2674 (1952 Ed.) provides as follows:

LIABILITY OF UNITED STATES

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries, resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof. (June 25, 1945, c. 646, §1, 62 Stat. 983.)

Title 12 Okl. St. Ann. §1053 (1937 Ed., as amended Laws 1943, p. 35, §1):

When the death of one is caused by the wrongful act or omission of another, the personal representative

of the former may maintain an action therefor against the latter, or his personal representative if he is also deceased, if the former might have maintained an action had he lived, against the latter, or his representative, for an injury for the same act or omission. The action must be commenced within two years. The damages must inure to the exclusive benefit of the surviving spouse and children, if any, or next of kin; to be distributed in the same manner as personal property of the deceased. As amended Laws 1943, p. 35, §1.

Title 36 V. A. Mo. S. Ch. 537, §537.080, provided on August 4, 1955, as follows:

LIABILITY FOR WRONGFUL DEATH GENERALLY

Whenever the death of a person shall be caused by a wrongful act, neglect or default of another, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who or the corporation which would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured. (R. S. 1939, §3653.)

QUESTIONS PRESENTED

Question 1

Do the provisions of the Federal Tort Claims Act, that the liability of the United States shall be determined in accordance with the law of the place where the negligent act or omission occurred, require the Federal District Court sitting in Oklahoma to apply the Oklahoma Wrongful Death Statute to petitioners' wrongful death claims against the United States of America, where the deaths of decedents within the State of Missouri were alleged to be caused by the negligent acts and omissions of the Government's employees within the State of Oklahoma?

Question 2

Although the liability of a private person in a wrongful death action brought against him in the Courts of Oklahoma, to recover damages for a wrongful death which occurred in Missouri as a result of his alleged negligent acts and omissions occurring in Oklahoma, would be determined by the law of Missouri because (1) the Oklahoma conflict of laws rule would require such reference, and (2) the Oklahoma Wrongful Death Statute has no extraterritorial application to a death which occurs in Missouri, should not the Court below have been required by the provisions of the Federal Tort Claims Act to apply the Oklahoma Wrongful Death Statute, under the same circumstances, to determine the liability of the United States of America in actions commenced against it pursuant to the provisions of the Tort Claims Act?

Statement of the Case

All of the within actions were commenced by petitioners against the United States of America in the Northern District of Oklahoma pursuant to the provisions of the Federal Tort Claims Act, 28 U. S. C. §§1346(b), 1402(b), 2671-2680, to recover damages for the wrongful deaths of their respective decedents (R. 1-8).[1] Jurisdiction of the District Court in all actions was based upon 28 U. S. C. §1346(b) (R. 5). Petitioners' decedents were killed on August 4, 1955 near Fort Leonard Wood, Missouri, in the crash of an airplane owned and operated by American Airlines, Inc. (R. 5, 7). Petitioners sought to recover damages under the Oklahoma Wrongful Death Statute, Title 12 Okl. Stat. Ann. §§1051-1054 (R. 5). No claim was made in any of these actions which sought relief under the laws of Missouri. Subsequent to the commencement of the actions, the United States impleaded American Airlines, Inc. as a third party defendant (R. 11).

At pre-trial conferences the District Court concluded that petitioners had no actionable claims against the United States of America under either the law of Oklahoma or the law of Missouri (R. 24-26, 35-37). The Court's conclusion was based upon the determination that (1) there is no cause of action under the Oklahoma Wrongful Death Statute where an act or omission occurring in Oklahoma results in injury and death in Missouri, and (2) if Oklahoma law is applicable under the Federal Tort Claims Act, then the general law of Oklahoma, including its conflict of laws rule,

---

[1] The pleadings in each of the within actions are identical insofar as the issues presented on this appeal are concerned. Therefore, the Court's decision based upon the pleadings in the *Richards* case will be determinative of all the issues presented in all the actions herein (see R. 20).

is applicable thereunder. The Court further concluded that in the circumstances of these cases the Oklahoma conflicts of law rule requires that petitioners' claims be determinable by reference to the Missouri Wrongful Death Statute and since petitioners had already received full satisfaction for any claims they might have had under that Statute,[2] they had no further claims thereunder (R. 21-22). In accordance with its Fndings of Fact and Conclusions of Law, the District Court entered its Order of Judgment dismissing the complaints in all fourteen actions with prejudice (R. 20-22).

Upon appeal to the Court of Appeals, the petitioners herein argued that the District Court was in error in the following respects: (1) The District Court's conclusions of law completely negated the ordinary meaning of the language actually employed by Congress to designate the law to be applied in determining the tort liability of the Government. If Congress had intended to measure the Government's liability in accordance with the law of the place of the death, tort, wrong or injury, it could easily have said so. Since it did not, it can be presumed that Congress intended that the explicit language used in the Act be given its natural meaning; (2) It can be presumed that when Congress stated in the Act that the government was to be liable "in accordance with the law of the place where the act or omission occurred" it was fully aware that the general conflict of laws rule prevailing in most states would refer the determination of a private defendant's liability for wrongful death to the law of the state in which the injury causing the death occurred. Therefore, by applying the general conflict of laws rule followed in Oklahoma in a non-diversity action against the United States of America, the District Court defeated the Congressional mandate that the liability of the Govern-

[2] See Petition, p. 5, nn. 1 and 2.

ment should be determined in accordance with the law of the state where the negligent act or omission occurred; (3) In providing claimants with a judicial remedy against the Government for the latter's torts, Congress was competent to impose any condition on that remedy it desired, including its own choice of law rule to determine the Government's liability. With regard to wrongful death actions commenced against private defendants, the choice of law rule specified by Congress in the Tort Claims Act does not change, in any manner, the established law of the states pertaining to the conflict of laws rules or the extraterritorial application of the states' wrongful death statutes. This is because the choice of law set forth by Congress in the Tort Claims Act can only be applied in nondiversity actions by the federal courts wherein the United States of America is the defendant.

In affirming the judgment of the District Court, the majority of the Court of Appeals stated that if the Tort Claims Act were silent with respect to the law to be applied in such actions under the Act, it would be clear that the general conflict of laws rule would apply (R. 41). However, the majority did expressly recognize that the Act was not silent in this area and it agreed that Congress took effective action to make a different rule applicable to the Government in such actions under the Tort Claims Act, *viz.*, that in a case in which the act or omission occurs in one state and the resulting death in another, the Act subjects the Government to liability in accordance with the tests and standards of the substantive law of the state in which the act or omission occurred (R. 42). Nevertheless, the majority was persuaded that its own view found adequate support in the Act (R. 42). The Court then determined that the Oklahoma Wrongful Death Statute had no extraterritorial effect in that the statute did not create a cause of action for a wrongful death occurring

in another state; it could not be applied to actions brought in the courts of Oklahoma for wrongful death occurring outside the state; and its application was limited to wrongful deaths which occur in Oklahoma (R. 43). The majority further determined that even though an action to recover for a wrongful death occurring in another state may be properly maintained in the courts of Oklahoma, such an action is not one to recover under the Oklahoma Wrongful Death Statute, but one for the enforcement of a right of action having its source in the law of the state in which the wrongful death occurred (R. 43). After discussing the Missouri Wrongful Death Statute and its limitations on the amount of recoverable damages, the majority then concluded by stating, "And this court is committed to the rule that where wrongful death occurs in one state and an action for damages is instituted in another, the law of the state in which the wrongful death occurred—not that in which the action was instituted—controls in respect to the maximum amount of damages which may be recovered" (R. 44). Since petitioners received full satisfaction under the law in which the deaths occurred, i.e., Missouri, the judgments of dismissal were severally affirmed (R. 45).

The dissenting opinion of Chief Judge Murrah stated that any right to recover under the Tort Claims Act would be inapplicable in all cases where the act or omission occurs in one state and the resulting death in another, if such right were made to depend upon the extraterritorial effect of the wrongful death statute of the place of the negligent act, since few, if any, state wrongful death statutes have any extraterritorial effect (R. 45). That by resorting to the Oklahoma conflict of laws rule, the majority not only acted contrary to the Court's agreed interpretation of the Tort Claims Act, but also raised a possible *renvoi* problem, e.g., if these suits had been commenced in

the District Court in Missouri,[3] the Missouri court, in accordance with the provisions of the Tort Claims Act, would have looked to the law of Oklahoma as the place where the negligent act occurred. Since the Oklahoma conflict of laws rule would apply the law of Missouri as the place where the death occurred, the Missouri court would then be faced with a referral back to its own law which, under the Tort Claims Act, would again refer to the law of Oklahoma as the place where the act or omission occurred (R. 45, 46). Judge Murrah concluded that Congress intended to avoid this circuitous stacking of conflicts rules by providing its own conflicts rule in the Tort Claims Act, that is, by looking to the law of the place of the negligent act and no further. If Congress had intended otherwise, it would have omitted from the Act the phrase, "in accordance with the law of the place where the act or omission occurred." However, by including this language, Congress prescribed the law and conditions under which the Government would become liable (R. 46).

Summary of Argument

I. The Court below should have given the language used by Congress in the Tort Claims Act the meaning which Congress clearly intended by applying the Oklahoma Wrongful Death Statute to petitioners' claims. The words "in accordance with the law of the place where the act or omission occurred" are clear and should have been literally applied since the Act as a whole and its relevant legislative history clearly support such application. The

---

[3] In accordance with 28 U. S. C. §1402(b) governing the venue of actions under the Tort Claims Act, petitioners Richards and Maupin, being residents of Missouri, could have properly commenced their actions in the U. S. District Court for the Western District of Missouri.

Court below erred in substituting its own view of the applicable law in place of the clear and unambiguous mandate of Congress on this point. Notwithstanding its express recognition that Congress made a different rule applicable to the United States in such cases, it completely disregarded this rule and applied State rules applicable only in actions between private persons.

II. The Court below erred in applying the State conflict of laws rule to actions governed by the provisions of the Federal Tort Claims Act. In so doing it defeated the congressional purpose to have the Government's liability determined in accordance with the law of the place "where the act or omission occurred."

III. The choice of law provided for in the federal statute herein was rendered meaningless by the application of the State rule governing extraterritorial application of its wrongful death statute, since few, if any, States give extraterritorial effect to their wrongful death statutes. In such cases, therefore, the congressional purpose to have the United States' liability determined in accordance with the law of the place where its employees were negligent would be defeated since such law would never be applied where the resulting death occurs in another state. The Court below, therefore, was in error by following the non-extraterritorial rule as would be applied by the Oklahoma courts in such actions between private parties.

ARGUMENT

I

The holding of the Court below completely negated the ordinary and plain meaning of the language employed by Congress to determine the liability of the United States under the Federal Tort Claims Act.

The Federal Tort Claims Act provides, 28 U. S. C. §1346 (b), that subject to the provisions of the Act:

> "... the district courts . . shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages ... for ... personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government ... under circumstances where the United States, if a private person, would be liable to the claimant *in accordance with the law of the place where the act or omission occurred.*" (Emphasis added.)

This language is unequivocal. This statute says that the law to be applied is the law of the place "where the act or omission occurred." It does not say anything else. By the use of this language, Congress gave the courts affirmative guidance for defining the law to be applied in determining the Government's tort liability. "In matters of statutory construction the duty of this Court is to give effect to the intent of Congress, and in doing so our first reference is of course to the literal meaning of the words employed," *Flora* v. *United States*, 357 U. S. 63, 65. There is no better or more authoritative guide to that meaning than the language of the statute itself, "if the language be clear, it is conclusive." *Osaka Shosen Kaisha Line* v.

United States, 300 U. S. 98, 101; *United States* v. *Hartwell*, 6 Wall. 385, 396.

Over a century ago Chief Justice Marshall, in *United States* v. *Wiltberger* (U. S.), 5 Wheat. 76, 96, stated:

> "The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one indeed, which would justify a Court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest. To determine that a case is within the intention of a statute, its language must authorize us to say so."

See also, *Van Camp & Sons* v. *Am. Can Co.*, 278 U. S. 245, 253 ("The words being clear, they are decisive. There is nothing to construe."); *Brotherhood of Railroad Trainmen* v. *Chicago R. & I. R. Co.*, 353 U. S. 30, 35 ("The language of [the statute] should be literally applied in the absence of a clear showing of a contrary or qualified intention of Congress.").

It is difficult to conceive of any more explicit or more precise language which could possibly have been used by Congress to command application of the law of the place of the negligent conduct than the words which it did employ. If Congress had not intended to measure the Government's liability by reference to the law of the place where the act or omission occurred, but instead had desired to measure such liability by the law of the place of the tort, or of the wrong, or of the injury or death, it could easily have said so. It could have said that the Government shall be liable "in accordance with the law of the place where the cause of action arose" or "in accordance

with applicable State law." Or, as suggested in the dissent[*] below of Chief Judge Murrah, Congress could have simply ended the relevant sentence of §1346(b), *supra*, by placing a period after the words "would be liable to the claimant" without adding the additional clause "in accordance with the law of the place where the act or omission occurred." However, Congress chose not to do so. Instead, it directed application of the law where the act or omission occurred, thereby waiving Governmental immunity but prescribing the law and the conditions under which it would become liable.

It is of course fundamental that the meaning of a statute is to be looked for not in a single sentence or section, but in all the provisions together and in their relation to the end in view, *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, 433, 439 (Cardozo, *J.*, dissenting); *National Labor Relations Board* v. *Lion Oil Company*, 352 U. S. 282, 288. An examination of the Federal Tort Claims Act clearly shows that Congress did not confine the place of conduct language merely to §1346(b). 28 U. S. C. §2672 (1952 Ed.) uses identical language in authorizing the head of each Federal agency to make administrative adjustments of claims of $1,000 or less. 28 U. S. C. §2674, which states that the Government shall be liable to the same extent as a private individual in like circumstances, provides in a paragraph added in 1948, 62 Stat. 983, that if "in any case wherein the death was caused, *the law of the place where the act or omission complained of occurred* provides, . . . for damages only punitive in nature, the United States shall be liable for actual or compensatory damages . . ." The use of these italicized words, in an amendment made by Congress almost two years after the Tort Claims Act was enacted, clearly demonstrates congressional approval of the same language it previously used in sections 1346(b)

[*] 285 F. 2d 521, at 526.

and 2672. In addition to sections 1346(b), 2672 and 2674 of the Act, the phrase "act or omission" appears in numerous other sections of the Tort Claims Act. See 28 U. S. C. §§1402(b),[5] 2675(a), 2676, 2680(a) and 2680(e).

This deliberate and consistent use of the same language throughout the Act can be squared only with the conclusion that Congress meant exactly what it said when it directed that the liability of the Government should be measured by the law of the place where the negligent act or omission of its employee occurred.

If the words of the statute itself were not enough to sustain petitioners' contention, the relevant legislative history of the Act clearly reinforces their interpretation of the provisions in question. The Federal Tort Claims Act was passed by the Seventy-ninth Congress in 1946 as Title IV of the Legislative Reorganization Act, 60 Stat. 842, after nearly thirty years of congressional consideration. The primary purpose of the Act was to relieve Congress of the crushing burden of considering thousands of private bills for relief from tort, and to extend a judicial remedy to claimants who, because of the doctrine of sovereign immunity, had no access to the courts.[6] Most of the earlier tort claim bills introduced proposed systems

---

[5] It is noteworthy that, if the phrase "act or omission" means the place of the injury rather than the place where the negligent act or omission occurred, it was error for the District Court to entertain the actions brought by anyone except residents of the Northern District of Oklahoma. Only petitioner Gates resides in this District. See 28 U. S. C. §1402(b).

[6] For a detailed legislative history of the Act see, *Dalhite* v. *United States*, 346 U. S. 15, 24-30; *Feres* v. *United States*, 340 U. S. 135, 140. See also, Hearings before the House Committee on the Judiciary, 77th Cong., 2d Sess. on H. R. 5373 and H. R. 6463 (*Memorandum, with Appendices, for the use of the Committee on the Judiciary*, 77th *Cong.*, 2d *Sess.—Explanatory of Committee Print of H. R.* 5373), pp. 37-42.

of compensation for personal injury or death to be administered by the United States Employees Compensation Commission,[7] but they did not contemplate making the liability of the United States equivalent to that of a private person. Later tort claim bills[8] proposed vesting concurrent jurisdiction in the Court of Claims and the District Courts to determine claims for injury or death caused by the negligent or wrongful act or omission of Government employees. These later bills provided that "In respect to such claims the United States shall be liable in the same manner and to the same extent as a private individual under like circumstances . . ."[9] However, none of these bills contained the significant language presently in §1346(b), *viz.*, "in accordance with the law of the place where the act or omission occurred."

The last hearings on the Act were held during the second session of the Seventy-seventh Congress.[10] It was during

---

[7] *E.g.*, see H. R. 6716 and 8651, 69th Cong., 1st Sess.; H. R. 9285, 70th Cong., 2d Sess.; S. 211, 72d Cong., 1st Sess.; S. 1043, 74th Cong., 1st Sess.

[8] *E.g.*, see H. R. 7236, 76th Cong., 1st Sess.; S. 2690, 76th Cong., 1st Sess.; H. R. 5299 and 5373, 77th Cong., 1st Sess.

[9] *E.g.*, see H. R. 5373, 77th Cong., 1st Sess., Sec. 201.

[10] Hearings before the House Committee on the Judiciary, 77th Cong., 2d Sess., on H. R. 5373 and H. R. 6463, January 29, 1942, pp. 1-69. These Hearings contain: (a) The Committee print of H. R. 5373 showing changes proposed by H. R. 6463, pp. 1-6; (b) The oral testimony of the then Assistant Attorney General Francis M. Shea in support of the bill, pp. 6-24, 30-36; (c) A prepared statement and discussion of the draftsmen comparing H. R. 5373 and H. R. 6463, pp. 24-30; (d) A Memorandum, with Appendices, for the use of the Committee on the Judiciary, for the purpose of explaining H. R. 6463, the Committee Print of H. R. 5373, pp. 37-46. Annexed to the Memorandum are: Appendix I: List of statutes to be repealed by H. R. 6463, pp. 47, 48; Appendix II: Criticisms by Congressmen of existing procedure of relief by private claims bills, pp. 49-55; Appendix III: Private claims bills before several recent Congresses, p. 56; Appendix IV: Comparison of H. R. 6463 with H. R. 7236, 76th Cong., 3d Sess., and H. R. 5373, 77th Cong., 1st Sess., pp. 57-69.

this Congress that the shape of the Federal Tort Claims Act was largely determined since no further hearings were held or substantial modifications were made prior to its enactment during the Seventy-ninth Congress as Title IV of the Legislative Reorganization Act of 1946.[11] The first time this language appeared was in H. R. 6463, 77th Cong., 2d Sess., §§201, 301, which was the House Judiciary Committee's printed revision of H. R. 5373, the latter being introduced during the first session of the Seventy-seventh Congress.[12]

Mr. Shea, the Assistant Attorney General, in explaining the differences between H. R. 5373 and the Committee revision, H. R. 6463, stated that there were "some changes which are in my opinion very desirable . . ."[13] The Memorandum submitted to the Committee which explained the Committee's revision stated that H. R. 6463 follows closely to the pattern of H. R. 7236 and H. R. 5373, "with two important exceptions."[14] The Memorandum continued:[15]

> "The other major difference is that the present bill subjects the determination of the validity of the claim, the defenses thereto, and the distribution of the recovery, *to the law of the place where the delinquent act or omission occurred.* H. R. 7236 and H. R. 5373

---

[11] 60 Stat. 842. See, *United States* v. *Spelar*, 338 U. S. 217, 220, n. 9.

[12] Hearings, *supra*, n. 10, pp. 2 and 3, §§201, 301.

[13] Hearings, *supra*, n. 10, p. 7.

[14] Hearings, *supra*, n. 10, p. 42. The first exception referred to was that H. R. 6463 vested exclusive jurisdiction over tort claims in the District Courts. H. R. 5373 and H. R. 7236 gave concurrent jurisdiction over such claims to the Court of Claims and the District Courts.

[15] Hearings, *supra*, n. 10, p. 43.

may, as a matter of law, have embodied the first of these requirements to some extent, but the present bill states this explicitly, and leaves to the local law the determination of certain matters specifically treated in H. R. 7236 and H. R. 5373, such as the beneficiaries entitled to the recovery in death cases, the defense of contributory negligence, and the like." (Emphasis added.)

Numerous other references to such law appear in the testimony and the documents submitted during this Hearing[16] as well as in subsequent bills and reports considered by the Congress prior to the passage of the Act.[17]

It is pertinent to observe also the remarks of the draftsmen concerning another change made in H. R. 6463 by the Committee. H. R. 5373, §303 (12) had excluded from coverage of the bill, "Any claim arising in a foreign country *in behalf of an alien.*" H. R. 6463, §402 (12) deleted the italicized words with this explanation: "Claims arising in a foreign country have been exempted from H. R. 6463, whether or not the claimant is an alien. Since liability is

---

[16] Hearings, *supra*, n. 10, pp. 2, 3, 26, 27, 29, 30, 35, and 61.

[17] *E.g.*, see H. R. Rep. No. 2245, 77th Cong., 2d Sess., to accompany S. 2221, §§201, 301, pp. 2, 9; S. Rep. No. 1196, 77th Cong., 2d Sess., to accompany S. 2221, §§201, 301 and discussion of §301, p. 6; H. R. Rep. No. 1287, 79th Cong., 1st Sess., to accompany H. R. 181, §301; S. Rep. No. 1400, 79th Cong., 2d Sess., to accompany 2177, §410, p. 32. That the "local law" means the law of the place where the negligent conduct occurred is indicated in S. Rep. No. 1196, 77th Cong., 2d Sess., §301, in which the Government's liability is determined "in accordance with the law of the place *where the negligence occurred.*" A discussion of this section appearing on page 6 states: "The liability of the United States is to be the same as that of a private individual under like circumstances and is to be determined under *local law* . . . *Local law* will govern not only the matter of liability but also the defenses available and the beneficiaries entitled to recovery." (Emphasis added.)

to be determined by the law of the *situs of the wrongful act or omission*, it is wise to restrict the bill to claims arising in this country." [18] (Emphasis added.) It is noteworthy that the Committee did not use the words "situs of the tort" or "situs of the injury" or "place where the cause of action accrued", but instead used the place of conduct language.[19]

Respondent American Airlines contended in the Court below that if the law of Oklahoma were to govern the Government's liability in these cases, then the United States

---

[18] Hearings, *supra*, n. 10, p. 29. Mr. Shea repeated this language during his oral testimony before the Committee, p. 35. See also, *United States* v. *Spelar*, 338 U. S. 217, 221.

[19] On page 9 of these Hearings, *supra*, n. 10, Mr. Shea was questioned by Congressman Robsion concerning the venue provisions under the Act as follows:

> "Mr. Robsion. Where does claimant bring the suit?
>
> Mr. Shea. The suit is to be brought in the district courts in the several districts.
>
> Mr. Robsion. Where the claimant resides?
>
> Mr. Shea. Either where the claimant resides, or in the locale of the *injury or damage*." (Emphasis added.)

This is the language which apparently compelled Judge Miller in his partial dissent in *Eastern Air Lines, Inc.* v. *Union Trust Co.*, 221 F. 2d 62, 80 (D. C. Cir. 1955) to conclude that the consequence of the negligent act or omission is to be considered in determining the applicable law. It is doubtful, however, whether Mr. Shea in responding to a question concerning venue, had in mind choice-of-law problems arising out of multi-state torts. This is made clear from a reading of the Hearings as a whole, for this was the only instance in which such language was used. Actually, Mr. Shea's response to this venue question was the exact opposite of the language used in the Committee revision of H. R. 5373. The Committee revision provided in §301 that: ". . . the United States District Court for the district wherein the plaintiff is a resident *or wherein the act or omission complained of occurred* . . shall have exclusive jurisdiction . . ." (Emphasis added), Hearings, etc. p. 2. In view of the numerous references to the place of conduct language, *supra* n. 16, it is submitted that since his remark was not addressed to the choice of law problem, but only to the venue provision, it is apparent that it has no probative significance or any bearing on the question at issue.

would not be liable "in the same manner and to the same extent as a private individual under like circumstances" 28 U. S. C. §2674, since the liability of a private person under the circumstances in these cases would be determined by the law of Missouri, the place where the injury causing the deaths occurred. See Restatement, *Conflict of Laws* (1934), §§377, 378, 391; *Gochenour* v. *St. Louis-San Francisco Ry. Co.*, 205 Okla. 594. The trouble with this argument is that the Act itself clearly dictates that the remedy shall not, in every instance, be coextensive with that available against a private person. Congress has provided procedural and substantive differences in the Act as well as departures from the common law.[20] These differences are noted in the legislative history[21] and judicial

---

[20] To illustrate a few of the differences between a claimant's right to relief against the United States under the Act and his right to relief against a private individual under like circumstances: The Act permits claimants to sue only in the federal courts, and not in the state courts which are available in actions against a private individual, §1346(b); the Act prescribes its own period of limitations which may be shorter or longer than that of the state, §2401(b); the claimant cannot obtain a trial by jury under the Act, although he could against a private individual, §2402; the claimant cannot obtain interest prior to judgment in suits under the Act regardless of the state rule governing private individuals, §2674; the claimant cannot obtain punitive damages under the Act, even though state law may provide for it as against a private defendant, §2674; the claimant cannot recover any damages against the United States on any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights, whereas he could recover such damages against a private individual, §2680(h); the claimant cannot obtain any recovery against the United States on a claim arising in a foreign country, although he could against a private individual, §2680(k); and the Act exempts the Government from liability for claims based on various types of activities, although a private individual would be liable in the same circumstances, §2680.

[21] Hearings before the House Committee on the Judiciary, 77th Cong., 2d Sess., on H. R. 5373 and H. R. 6463, p. 31, wherein it is stated:

[*Continued on next page*]

decisions construing the Act." It is thus clear that Congress, in waiving the traditional governmental immunity, clearly intended to place limits upon its waiver for the purpose of protecting the Government. Cf. *McKenzie* v. *Irving Trust Co.*, 323 U. S. 365, 369.

These restrictions and conditions upon the remedy conferred by the Act, evidencing wide variances from the relief obtainable against a private individual in similar circumstances, simply illustrate the settled principle that in consenting to suit against the Government, Congress can impose any condition it chooses upon the right to sue and upon the nature of the remedy, *Soriano* v. *United States*, 352 U. S. 270, 276-277; *Dalehite* v. *United States*, 346 U. S. 15, 31. The Tort Claims Act's requirement of the application of the law of the place where the negligent act or omission occurred, rather than the application of the law of the place of the injury or of the act's consequences, is but another variance which Congress chose to insert.

Adherence to the literal mandate and natural meaning of the "act or omission" clause does not result in any conflict with the basic purpose or policy of the Act. For it seems clear that Congress, knowing that the negligent acts or omissions of governmental employees could have

---

"Mr. McLaughlin. The United States, as I understand it, is placed in the same position as an individual?

Mr. Shea. With the exceptions noted.

Mr. McLaughlin. With the exception that no costs may be assessed against the United States?

Mr. Shea. That is right. There are some additional exceptions."

[11] *State of Maryland, to use of Burkhardt* v. *United States*, 165 F. 2d 869 (4th Cir. 1947); *Massachusetts Bonding & Insurance Co.* v. *United States*, 352 U. S. 128; *Feres* v. *United States*, 340 U. S. 135; *Dalehite* v. *United States*, 346 U. S. 15.

disastrous consequences in foreign countries,[23] did not mean to waive sovereign immunity to the extent that the liability of the United States would be determined in accordance with the law of a foreign power. See 28 U. S. C. §2680(k). The "act or omission" language further exemplifies this policy. The "act or omission" language also has the sensible benefit of adopting the law of the state (a) in which the government's employee is located and controlled by his superiors, (b) which determines the applicable standard of care governing such employee, (c) which can provide the Government with knowledge of defenses which will be available to it before it proceeds upon a course of action, and (d) which results in greater simplicity and certainty.[24] In such circumstances there is no warrant for departing from the rule expressly prescribed by Congress.

This, however, is exactly what the majority of the Court below did, notwithstanding that it recognized that Congress "for reasons of its own choice" took effective action to make a different rule applicable to the Government in such cases. The Court below stated that there would be no doubt that Missouri law would determine the Government's liability in these cases *if* the Tort Claims Act were silent.

---

[23] It is noteworthy that in the case of *Dalehite* v. *United States*, 346 U. S. 15, had the French ship "Grandcamp" exploded at the French port of its destination instead of in Texas City, Texas, the question of the Government's liability to those injured and killed in France would have been determined, in all probability, in accordance with the law of France, in the absence of the exception contained in 28 U. S. C. §2680(k). The "act or omission" language in the Act is but another example of congressional policy to have the liability of the United States determined in accordance with the law of the place where the Government's employees *act*.

[24] Cf., *Nolan* v. *Transocean Airlines*, 276 F. 2d 280 (2d Cir. 1960), judgment set aside and remanded, 365 U. S. 293, reaffirmed on remand, 290 F. 2d 904.

It then expressly recognized the fact that the Act was not silent by stating, 285 F. 2d at 524:

> "But the Tort Claims Act is not silent in that area. For reasons of its own choice, *Congress took effective action to make a different rule applicable to the Government in such cases.*" (Emphasis added.)

The Court then summarized the pertinent parts of §§1346(b) and 2674 and stated at page 524:

> "When construed together, the effect of the two provisions in a case in which the act or omission occurs at one place and the resulting death at another is to subject the Government to liability according to the tests and standards of the substantive law of the state in which the act or omission occurred. Except when expressly provided otherwise in the Act itself, the effect of the two provisions in a case in which the act or omission occurs at one place and the resulting death at another is to equate the liability of the Government with that of a private litigant under the substantive law of the state where the act or omission of the employee of the Government occurred. Eastern Air Lines v. Union Trust Co., [95 U. S. App. D. C. 189, 221 F. 2d 62, certiorari denied Union Trust Co. v. U. S., 350 U. S. 911]; Voytas v. United States, 7 Cir., 256 F. 2d 786."

Recognizing the contrary view expressed in *United States* v. *Marshall*, 9 Cir., 230 F. 2d 183, and *Hess* v. *United States*, 9 Cir., 259 F. 2d 285, the Court continued by stating "But we are persuaded that our view finds adequate support in the Act." 285 F. 2d at 524. However, the majority opinion of the Court makes no further reference to the Act or any of its legislative history. It merely discusses

the Oklahoma Wrongful Death Act and the fact that the Courts of Oklahoma have held that it has no extraterritorial application to a death occurring in another state and that in actions commenced in the Oklahoma courts to recover damages for a wrongful death occurring in another state the Oklahoma courts will apply its conflict of laws rule and apply the law of the state where the injury causing the death occurred. 285 F. 2d at 524-525. The Court concludes its opinion by stating that it is "committed" to a rule which, after it is stated, reveals itself to be the general conflict of laws rule, and citing in support thereof a case in which the cause of action was between private persons.

The majority of the Court below utterly failed to establish any basis whatsoever in the Tort Claims Act for the views it expressed. After recognizing that Congress made a "different rule" applicable to the Government, the Court was clearly in error in completely disregarding that rule by substituting its own views for those of the legislature. The Court below did not construe this statute to seek the legislative meaning, it merely enlarged the statute so that what it thought was omitted, presumably by inadvertence, it would include. See *Iselin* v. *United States*, 270 U. S. 245, 251. This "disrespects legislative responsibility and disregards judicial limitations." *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448, 460, 473 (dissenting opinion).

II

The application of the Oklahoma conflict of laws rule by the Court below defeated the legislative purpose to have the liability of the United States determined in accordance with the law of the place where the act or omission occurred.

The rule followed by the Oklahoma courts where the injury causing death occurs in another state is the conflict of laws rule generally followed in most jurisdictions in this country,[25] i.e. the court will apply the law of the state where the injury occurred that caused the death, *Gochenour* v. *St. Louis-San Francisco Ry. Co.*, 205 Okla. 594. Petitioners have no quarrel with this rule *insofar as it is applied in actions between private persons.* However, the Tort Claims Act, as the Court below candidly admitted, makes a different rule applicable to the Government in such cases. The Act provides that the liability of the United States it to be determined in accordance with the law of the place "where the act or omission occurs."[26] The use of this language is entirely inconsistent with a legislative intent to include the general conflicts rule prevailing in most states. And it cannot be realistically inferred that the lawmakers, in making its choice in such clear and unambiguous language, did not have knowledge or take cognizance of that rule, or of the minority rule on this subject.[27] Congress, thus faced with 'wo competing rules,

---

[25] Restatement, *Conflict of Laws* (1934) §§377, 378, 391; 25 C. J. S., *Death*, §28, nn. 27-30; 15 C. J. S., *Conflict of Laws*, §12, nn. 63, 70, 71; Goodrich, *Conflict of Laws*, 263-264 (1949).

[26] 28 U. S. C. §§1346(b), 2672, 2674.

[27] *E.g.*, see, *Vrooman* v. *Beech Aircraft Corp.*, 183 F. 2d 479 (10th Cir.); *Levy* v. *Daniel's U-Drive Auto Renting Co.*, 108 Conn. 333; *Baker* v. *Haldeman-Julius*, 149 Kan. 560; *Caldwell* v. *Gore*,

clearly stated that "the law of the place where the act or omission occurred" should control. In making such choice, it should not be for the courts to question the judgment of the Congress in so doing, *Jackson* v. *Taylor*, 353 U. S. 569, 580, for it deliberately chose to permit differences to exist between the law applicable to a private defendant and that applicable to the United States. Cf. *Massachusetts Bonding & Insurance Co.* v. *United States*, 352 U. S. 128.

To say that the law of the place "where the act or omission occurred" includes the conflict rules of the state would result in, as pointed out in the dissent below, a circuitous stacking of one conflicts rule on another in order to arrive at controlling substantive law. Surely it cannot be inferred that Congress expressed itself in self-defeating terms, *United States* v. *Shirley*, 359 U. S. 255, 260. Yet this would be the result if the decision below is to stand.

In *Eastern Air Lines, Inc.* v. *Union Trust Company*, 221 F. 2d 62 (D. C. Cir. 1955) certiorari denied *sub nom. Union Trust Co.* v. *United States*, 350 U. S. 911, the exact question herein presented was before the District of Columbia Court of Appeals. That case involved a collision between a P-38 airplane with DC-4 airliner over the District of Columbia resulting in the deaths of everyone aboard the airliner. Plaintiff sued Eastern Air Lines and the United States and obtained a jury verdict against the airline in the amount of $50,000 under the law of the District of Columbia. The trial judge held the Government liable in the Tort Claims Act case and fixed damages in the same amount, $50,000. The Court of Appeals reversed the Dis-

---

175 La. 501; *Burkett* v. *Globe Indemnity Co.*, 182 Miss. 423; cf. *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347; *Slater* v. *Mexican National R. Co.*, 194 U. S. 120; *Lauritzen* v. *Larsen*, 345 U. S. 571. See also, Rheinstein, *"The Place of Wrong"* 19 Tulane L. Rev. 4, 165.

trict Court's decision that the airline was liable. Upon the petition of the plaintiff, this granted certiorari and reversed the judgment of the Court of Appeals in the case against the airline, *Union Trust Co.* v. *Eastern Air Lines*, 350 U. S. 907, later reopened, modified and remanded, 350 U. S. 962. In the case against the Government the Court of Appeals affirmed the holding of the District Court but reduced the damages to $15,000 because the negligent acts and omissions of the Government employees occurred in the control tower in Virginia, and under the law of that state $15,000 was the limit which could be recovered under its death statute. Although the trial court made a specific determination that the accident happened in the District of Columbia, *Union Trust Co.* v. *United States*, 113 F. Supp. 80, 85 (D. C., D. C. 1953), and although Virginia courts followed the general conflict of laws rule, *State of Maryland for use of Jones* v. *Coard*, 175 Va. 571; *Dowell* v. *Cox*, 108 Va. 460, the Court of Appeals nevertheless applied the internal law of Virginia and the death statute of that state in determining the Government's liability.[28] See also *Voytas* v. *United States*, 256 F. 2d 786 (7th Cir. 1958). The cases of *United States* v. *Marshall*, 230 F. 2d 183 (9th Cir. 1956) and *Hess* v. *United States*, 259 F. 2d 285 (9th Cir. 1958), *rev'd* on other grounds, 361 U. S. 314, which were relied on by respondent American Airlines in the Court below, are not to the contrary. In the *Marshall*

[28] Respondent American Airlines contended in the Court below and in this Court (Brief in opposition to Petition, pp. 4-6, and Appendix) that the only reason Virginia law was applied in the *Union Trust* case was because of a stipulation to this effect between the attorneys for the parties. This stipulation was not made part of the record before the Court below nor is it made part of the record before this Court. Notwithstanding, this stipulation clearly shows that all the parties agreed to was to be bound by the final *decision* made by the Court in that case. In other words the District of Columbia Courts first had to *decide* this question, which it eventually did.

case the Court found negligence of the Government in Idaho as well as Utah. In the *Hess* case there was no question of applying the substantive law of one state rather than that of another, *Hess* v. *United States*, 361 U. S. 314, 318, n. 7.

Although the Court below did not refer to *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, or *Klaxon Co.* v. *Stentor Elec. Mfg. Co.*, 313 U. S. 487, it seems apparent that the Court erroneously applied the rules of those two cases in arriving at its decision. While the *Erie* case commands application of the substantive law of the state in which the district court sits and *Klaxon* requires the application of the forum state's conflict of laws rule, it is clear that the rules of those cases are limited to actions based upon diversity of citizenship jurisdiction; whether they will be extended to actions in which jurisdiction is based upon a federal statute remains unanswered. See, *D'oench, Duhme & Co.* v. *Federal Deposit Insurance Corp.*, 315 U. S. 447; *McKenzie* v. *Irving Trust Co.*, 323 U. S. 365; *Vanston Bondholders Protective Committee* v. *Green*, 329 U. S. 156. In non-diversity actions under the Tort Claims Act, however, it is §1346(b) which affords the direction to state law, not *Klaxon*. While in diversity cases governed by *Klaxon*, the district court must look to the law of the *forum* for guidance, in actions under the Tort Claims Act the district court is only required to look to the law of the place where the act or omission occurred, and that does not necessarily have to be the law of the state in which the district court sits, 28 U. S. C. §1402(b).[29]

[29] Application of state conflict of laws rules to the "act or omission" language of the Act would also render the option in §1402(b) meaningless. That is, should claimants follow the congressional direction and commence suit in the district in which the act or omission they complain of occurred, or must they follow the precarious course of first determining the states conflict rule before commencing their action? Needless to say the choice would be difficult if the applicable statute of limitations were about to expire.

III

Since the choice of law in these actions is federal and not state, the application of the Oklahoma rule, that its death statute has no extraterritorial effect, was a complete disregard of the congressional purpose to have the liability of the Government determined in accordance with the law of the place where the act or omission occurred.

In holding that the Oklahoma Wrongful Death Statute could not be applied in these actions, the Court below in effect allowed the Courts of Oklahoma to interpret a Federal statute. It should not be disputed that Federal interpretation of the federal law will govern, not state law, *Textile Workers Union* v. *Lincoln Mills*, 353 U. S. 448, 456. In enacting federal legislation, Congress should not be bound by decisions of state courts which have the effect of defeating such legislation, particularly where Congress has explicitly expressed itself on the point. In following decisions of the Oklahoma courts to the effect that its death statute cannot be applied in actions wherein the death occurs in another state, the Court below allowed the words used by Congress to be given a meaning completely opposite to the sense in which Congress used them. In so doing, the Court below failed to recognize that Congress could impose any condition it chose on the governmental immunity it waived. *State of Maryland, to use of Burkhardt* v. *U. S.*, 165 F. 2d 869 (4 Cir. 1947).

The Court below has also failed to recognize that Congress, in making its own choice of the law to determine governmental liability, has not changed any of the rules or policies followed by the states in construing their wrongful death statutes. This is because the choice made by Congress can only be applied in federal courts by federal

judges in actions against the Government under the Tort Claims Act, 28 U. S. C. §1346(b); the states are still free to apply their own rules in state court actions between private parties, subject, of course to applicable constitutional restrictions, *Wells* v. *Simonds Abrasive Co.*, 345 U. S. 514, 516. There are no conflicts of state and federal jurisdiction in such multi-state tort claims merely because Congress chose to have governmental liability determined by a law which the states would not apply in determining the liability of a private defendant. The two rules may subsist without conflict, each reigning in its own realm, *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144, 155. As long as the choice made by Congress does not disturb the established rules and policies applied by the courts of Oklahoma in actions between private persons, and it does not, it is of no concern to the State of Oklahoma that Congress chose a different rule to be applied only against the United States in federal courts, for Congress has done so in the past when it disagreed with the rule applied by the state. See *Massachusetts Bonding & Insurance Co.* v. *United States*, 352 U. S. 128.

In the Court below the respondent United States agreed that the law of Oklahoma was applicable under the Tort Claims Act since petitioners alleged that the Government's negligence occurred in the State. However, it further contended that since it was well settled in Oklahoma that there was no common law remedy for wrongful death[20] any right to recovery must arise out of the Oklahoma Wrongful Death Statute.[21] It then reasoned that since

---

[20] *Lee Way Motor Freight* v. *Yellow Transit Freight Lines*, 251 F. 2d 97, 99 (10th Cir.); *F. W. Woolworth* v. *Todd*, 204 Okla. 532, 534.

[21] *Lee Way Motor Freight* v. *Yellow Transit Freight Lines, supra; Gochenour* v. *St. Louis-San Francisco Ry. Co.*, 205 Okla. 594.

the Oklahoma statute provides a remedy only if the injury that caused the death occurred in Oklahoma, *Gochenour* v. *St. Louis-San Francisco Ry. Co.*, 205 Okla. 594; *Fenton* v. *Sinclair Refining Co.*, 206 Okla. 19, and since the injury causing deaths to petitioners' decedents did not occur in Oklahoma, the petitioners therefore were without a remedy since Oklahoma provided none under the circumstances of these cases. This reasoning of course is but an attempt to avoid the consequences of the argument it successfully urged upon the court in *United States* v. *Union Trust Co.*, 221 F. 2d 62 (D. C. Cir. 1955) *cert. den.* 350 U. S. 911, wherein the Court of Appeals reduced a judgment against the United States of $50,000 to $15,000 to comply with the statutory limitation on wrongful death damages recoverable under the law of Virginia, the place where the Government's negligence occurred.

The reasoning of the United States, that petitioners have no remedy under the Oklahoma statute, must fail for two reasons. First, because this precise point was decided in the *Union Trust Co.* case, *supra*, contrary to the position the Government now takes. In that case the trial court made a specific finding that the accident occurred in the District of Columbia. The jury verdict of $50,000 against Eastern Air Lines could only have been sustained, as it eventually was, upon the ground that the injury causing death occurred in the District of Columbia. For if the injury causing death occurred in Virginia then Eastern would have also been entitled to have the jury verdict reduced to conform to the Virginia statutory limitation of $15,000. However, although the accident occurred in the District of Columbia and the District of Columbian death statute was applied in the action against Eastern Air Lines, the Court of Appeals nevertheless applied the Virginia death statute in the case against the Government,

even though the courts of Virginia have held that its wrongful death statute has no extraterritorial effect, *Sherly* v. *Lotz*, 200 Va. 173; *Withrow* v. *Edwards*, 181 Va. 344, reversed in part on other grounds, 181 Va. 592, certiorari denied, 320 U. S. 761. See also, *State of Maryland for use of Jones* v. *Coard*, 175 Va. 571. The Court of Appeals in the *Union Trust Co.* case merely recognized, as it must have, that the federal choice of law was to be applied in actions against the United States under the Tort Claims Act.

Secondly, the Government is under the misconception that the remedy given to petitioners was given to them by the State of Oklahoma. Clearly this is not so. Prior to the enactment of the Tort Claims Act, persons injured by reason of the negligence of governmental employees could not bring an action in tort against the United States for the simple reason that the Government had not waived its sovereign immunity in such cases. While such persons may have had a "right" they certainly had no remedy. Certainly the laws of Oklahoma did not, and indeed, could not, provide any remedy to such persons enforceable against the United States. Whatever remedy such persons had was in the nature of the non-judicial relief afforded by the use of private bills introduced in Congress. A judicial remedy was first given to such persons when Congress waived the sovereign immunity of the United States by passing the Federal Tort Claims Act in 1946. Then, and only then, did plaintiffs have a judicial remedy, and it was provided by the United States, not Oklahoma. While Congress did not create a new cause of action, *Dalehite* v. *United States*, 346 U. S. 15, 43, it did however provide claimants with a remedy which they did not have before, *Feres* v. *United States*, 340 U. S. 135, 140.

Therefore, as far as suits under the Tort Claims Act are concerned, it does not matter in the least that, under the circumstances in the within actions, Oklahoma would not provide a remedy to a person possessing a claim against a private defendant, for the Tort Claims Act applies to the United States, not private defendants. Thus, in providing that remedy Congress could place any condition upon it that it pleased. One of those conditions, for reasons previously shown, was that the Government's liability was to be determined "in accordance with the law of the place where the act or omission occurred." The dissenting opinion of Chief Judge Murrah clearly showed the effect of the majority's application of the Oklahoma non-extraterritorial rule when he stated, 285 F. 2d at 526:

> "We know that few, if any, state wrongful death statutes have any extraterritorial effect. If, therefore, the right to recover under the Tort Claims Act in cases like these is made to depend upon the extraterritorial effect of the wrongful death statute of the place of the negligent act, the Act would be inapplicable to all such cases. Surely Congress did not intend any such anomalous result."

CONCLUSION

The Court below completely ignored the natural meaning of the words used by Congress in the Federal Tort Claims Act to determine the liability of the United States, even though it specifically agreed that Congress made "a different rule applicable to the Government in such cases." Notwithstanding its agreement, it was persuaded that "our view" found adequate support in the Act. Without identifying such support or even discussing the Act or its legislative history, it held that it was "committed" to a rule of law which is generally applied in state courts in actions between private persons, even though Congress by its words clearly indicated that it intended a different rule to apply. In reaching this result the Court below clearly went beyond its judicial limitations in the face of a clear congressional mandate. It was reversible error for it to do so.

PRAYER

For the foregoing reasons, petitioners pray that the judgment of the Court of Appeals be reversed and that the petitioners be granted such other and further relief as this Court deem proper.

Respectfully submitted,

SUZANNE THOMAS RICHARDS
HARVEY BARUCK
CLARINE FAROUGH
BERNICE L. MAUPIN
MARGARET J. HOWE
ELIZABETH R. CROSS
THERESE B. AKIN
ALTHEA S. GATES
RUTH JEAN CARR-HARRIS
ANNA MAE O'NEIL
MARGARET EMMA BARRON
MYRA FIELDS
VIRGINIA HOBSON
JOSEPHINE M. SCHMYSER

By EDWARD M. O'BRIEN and
TRUMAN B. RUCKER
Counsel for Petitioners
290 Madison Avenue
New York 17, New York